United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

To be returned

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Court of Appeals, District of Columbia

OCTOBER TERM, 1906.

No. 1712.

449

WILLIAM J. CARTER, APPELLANT,

vs.

ALLAN L. McDERMOTT, RECEIVER OF THE CITY AND SUBURBAN RAILWAY COMPANY OF WASHINGTON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JULY 31, 1906.

U.S. COURT OF APPEALS

FOR THE

DISTRICT OF COLUMBIA

VOL. 22

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 19, 1906.

In the Court of Appeals of the District of Columbia.

No. 1712.

WILLIAM J. CARTER, Appellant,
vs.
ALLAN L. McDERMOTT, Receiver, &c.

a Supreme Court of the District of Columbia.

No. 46883. At Law.

WILLIAM J. CARTER, Plaintiff,
vs.
ALLAN L. McDERMOTT, Receiver of the City and Suburban Railway Company of Washington, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, That in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration.*

Filed April 15, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 46883.

WILLIAM J. CARTER, Plaintiff,
vs.
ALLAN L. McDERMOTT, Receiver of the City and Suburban Railway Company of Washington, Defendant.

The plaintiff William J. Carter, a citizen of the United States and a resident of the District of Columbia, sues the defendant Allan L. McDermott, receiver of the City and Suburban Railway Company, a corporation doing business in the District of Columbia and State of Maryland, for that heretofore, to wit, on the 12th day of December, 1903, at the time of the grievances hereinafter mentioned and for a long time prior thereto, the defendant was engaged in the business of operating a line of electric railway from, to wit, the corner of

Fifteenth and G streets northwest in the City of Washington, District of Columbia, through and along certain streets in the City of Washington and District of Columbia to a certain power house or car barn of the defendant situated in the District of Columbia in a certain part of the said District known as Eckington and thence through and along certain streets and highways of the District of
Columbia to the State of Maryland and thence in said State
2 of Maryland to a station in said *said* state known as Berwyn
and the plaintiff at the times aforesaid was in the employ of said defendant as its servant and the motorman of one of the electric cars operated by the defendant; that plaintiff entered into the employ of said defendant in the City of Washington and at the time of said employment and thence until and after the time of the grievances hereinafter mentioned there was a certain police regulation of the Government of the District of Columbia having the force and effect of law whereby it became and was the duty of the defendant after sundown to have each of its said electric cars equipped with two lights one at each end of said car and there was a law of the State of Maryland requiring two lights, one at each end of electric cars running after dark in the State of Maryland, and it became and was the duty of the defendant to see that each and every of its said electric cars that was to and did run in the District of Columbia after sundown and each of its said cars that ran in the State of Maryland after dark was equipped and supplied with a light on each end thereof before said car left the car barn or power house of defendant in Eckington aforesaid and while it was running in the District of Columbia and the State of Maryland and plaintiff had a right to rely on an observance of said police regulation enacted and promulgated for the safety of plaintiff and the public, and it also was the duty of the defendant in the operation of the line of electric railway and the cars aforesaid to supply reasonably safe appliances and reasonably skilled, competent and experienced employés and
to adopt safe methods in the conduct of its business as afore-
3 said, and to instruct said employés aforesaid to a reasonable
and proper extent as to the duties and precaution for the public safety and the safety of their fellow servants by them the said employees to be observed and fulfilled and performed, on the performance of all of which duty resting on defendant plaintiff had a right to and did rely for his personal safety while in the employment of said defendant; yet the defendant nevertheless in wrongful and flagrant disregard and violation of its duty in the premises, then and there and at and for some time prior to the happening of the occurrences hereinafter mentioned would not and did not observe and comply with the police regulation and law hereinbefore referred to and would not and did not see to it that the electric car which caused the injuries to plaintiff thereinafter recited, and which car said defendant knew was to traverse the streets and highways of the District of Columbia and highways of the State of Maryland after sundown, was equipped with a light at each end of said car and said car aforesaid was permitted to and did leave the power house or car barn aforesaid without a light at each end thereof

and did traverse the streets and highways of the District of Columbia and the State of Maryland after sundown on the evening of the accident to plaintiff hereinafter mentioned without a light on each end thereof and furthermore was not provided with reasonably safe appliances for its operation but was equipped with defective, unsafe and unproper appliances, namely, a defective and unsafe trolley pole, rope and trolley box and was not provided with reasonably competent, skilled and experienced employees for its operation instructed to a reasonable extent in the duties by them to be performed and precautions by them to be observed and taken for the safety of the public and of plaintiff whereby and by reason of the aforesaid negligence on the part of the defendant a car of defendant so improperly and negligently equipped supplied and manned came to a full stop and unable to proceed on defendant's line of railway at or near Hyattsville in the State of Maryland on the night of the day of December — 1903 and was permitted to remain stationary on the said tracks without any warning light or other signal and by reason thereof and of defendant's negligence as aforesaid came into collision with the car of which plaintiff was motorman while plaintiff in the management and operation of the said car of which he was motorman was exercising due and reasonable care on his part, whereby and by reason whereof and of the negligence of the said defendant as aforesaid plaintiff was precipitated violently to and against the front and sides of the car of which he was motorman and was struck severe blows by parts of one or both of the cars which came into collision and thereby one of the legs and knee cap of the plaintiff was fractured, bruised and broken and plaintiff was cut and bruised about the head and body and the plaintiff was greatly wounded and permanently injured, insomuch that the said plaintiff then and there became and was sick, sore, lame and disordered for a long space of time, to wit, from thence hitherto, during all of which time the said plaintiff suffered and underwent great pain, was hindered and prevented from carrying on his lawful and necessary affairs and business by him during that time to be performed and transacted and thereby lost and was deprived of great gains and profits which had been accustomed to arise and accrue and which otherwise would have continued to arise and accrue to said plaintiff from carrying on of the same; and also by means of premises aforesaid the plaintiff was forced and obliged to and did then and there pay, lay out, expend and incur liability for divers large sums of money, amounting in the whole to the sum of $300.00 in and above his necessary support and maintenance, to wit, at the City of Washington, in the District of Columbia, aforesaid.

Wherefore said plaintiff saith he is injured and hath sustained damage to the amount of $15000.00 and therefore he brings this suit.

MASON N. RICHARDSON,
CHARLES H. MERILLAT,
Attorneys for Plaintiff.

NOTE.—The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

MASON N. RICHARDSON,
CHARLES H. MERILLAT,
Attorneys for Plaintiff.

6 *Plea.*

Filed May 12, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 46883.

WILLIAM J. CARTER
vs.
ALLAN L. MCDERMOTT, Rec., etc.

The defendant, for plea to the declaration filed in the above-entitled cause, says he is not guilty as alleged.

J. J. DARLINGTON &
R. B. BEIREND,
Attorneys for Defendant.

Joinder in Issue.

Filed May 13, 1904.

In the Supreme Court of the District of Columbia.

At Law. No. 46883.

WILLIAM J. CARTER
vs.
ALLAN L. MCDERMOTT, Rec., etc.

And now comes the plaintiff by his attorneys and joins issue with the defendant's plea.

MASON N. RICHARDSON,
CHARLES H. MERILLAT,
Attorneys for the Plaintiff.

7 Supreme Court of the District of Columbia.

FRIDAY, *March* 30, 1906.

Session resumed pursuant to adjournment, Mr. Justice Wright, presiding.

At Law. No. 46883.

WILLIAM J. CARTER, Pl't'f,
vs.
ALLAN L. MCDERMOTT, Receiver of the City and Suburban Railway Company of Washington, Def't.

Now again come here the parties aforesaid, in manner aforesaid, and the same jury return into Court, and on their oath say, they find the issue herein joined in favor of the plaintiff and assess his damages, by reason of the premises, at Twenty five hundred dollars ($2,500.) if the Court shall be of the opinion that he ought to recover against the defendant upon the facts submitted to us upon the trial, which facts were as follows:

1. We find that for the safety of motormen, ordinary care did require the defendant to maintain a rear light upon car No. 409 while upon its way from Riverdale to the District Line on the occasion of the accident.

2. We find that upon the occasion of the accident, the defendant did provide upon the curb at 4th and T streets a rear light for car No. 409.

3. We find that a rule of the Company required Shaffer to place said light in position upon the car.

4. We find that said light was not omitted through his fault alone.

8 5. We find that when car No. 409 left Riverdale to return to Washington, Carter did not know that it carried no rear light.

6. We find that after he left Riverdale, Carter was not negligent in failing to look out for car No. 409.

7. We find that Carter was not negligent in a manner that directly contributed to his injury.

But upon these facts, if it shall be the opinion of the Court that the plaintiff ought not to recover, against the defendant, then we find in favor of the defendant.

Motion to Strike out and Vacate Finding of Special Verdict.

Filed April 3, 1906.

In the Supreme Court of the District of Columbia.

Law. No. 46883.

WILLIAM J. CARTER, Plaintiff,
vs.
ALLEN L. MCDERMOTT, Receiver City and Suburban Railway, Defendant.

Now comes the defendant and moves the court:

First. To set aside, strike out and vacate the finding of fact by the

jury on March 30th, 1906, Numbered 4, to wit: "We find that said light was not omitted through his (Shaffer's) fault alone," on the following grounds:

(*a.*) That in view of the special findings numbered 2 and 3, the said finding numbered 4, was both unnecessary and a mere conclusion of law;

9 (*b.*) That said finding is legally erroneous and inconsistent with the other findings of the jury;

(*c.*) That there was no testimony whatever to support it.

Second. To enter up judgment for the defendant on the verdict and special findings of the jury.

CHAS. A. DOUGLAS,
G. P. HOOVER,
Defendant's Attorneys.

Notice to Mason N. Richardson and Charles H. Merrilat, Attorneys for the Plaintiff.

Take notice that the undersigned attorneys for the defendant will bring the above motion to the attention of his honor Mr. Justice Wright, presiding in Circuit Court No. 1, on Friday the 6th day of April, 1906, at the hour of ten o'clock in the forenoon, or as soon thereafter as counsel can be heard.

CHAS. A. DOUGLAS,
G. P. HOOVER,
Defendant's Attorneys.

April 3rd, 1906.

Service of above motion acknowledged.

MASON N. RICHARDSON,
Plaintiff's Attorneys.

April 3rd, 1906.

10 *Motion for New Trial.*

Filed April 3, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 46883.

WILLIAM J. CARTER, Plaintiff,
vs.
ALLAN L. MCDERMOTT, Rec., etc., Defendant.

And now comes the plaintiff, by his attorneys, and moves the Court to set aside the verdict rendered in the above-entitled cause, and to grant a new trial, for the reasons following:

1. Because the verdict was against the evidence;
2. Because of errors of law committed by the justice presiding, in ruling upon the evidence.

3. Because of errors of the Court in refusing instructions prayed for by the plaintiff to be given to the jury.

MASON N. RICHARDSON,
CHARLES H. MERILLAT,
Attorneys for Plaintiff.

11 *Motion to Enter up Judgment for Plaintiff.*

Filed April 3, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 46883.

WILLIAM J. CARTER
vs.
ALLAN L. MCDERMOTT, Receiver.

And now comes plaintiff, by his attorneys, and moves the Court to enter up judgment for the plaintiff on the verdict and special findings of the jury.

CHARLES H. MERILLAT,
MASON N. RICHARDSON,
Attorneys for Plaintiff.

Supreme Court of the District of Columbia.

FRIDAY, *April* 20, 1906.

Session resumed pursuant to adjournment, Mr. Justice Wright, presiding.

* * * * * * *

At Law. No. 46883.

WILLIAM J. CARTER, Pl't'f,
vs.
ALLAN L. MCDERMOTT, Receiver of the City and Suburban Railway Company of Washington, Def't.

This cause coming on for hearing upon the motion of the defendant to strike out the 4th finding of the jury and for judg-
12 ment; the motions of the plaintiff for a new trial and to render judgment upon the special findings of the jury, it is considered that the 4th finding of the jury be, and hereby is set aside; the motions of the plaintiff for new trial, and for judgment be, and hereby are overruled, and that the motion of the defendant for judgment be, and the same is hereby granted.

Therefore it is considered that the plaintiff take nothing by his suit, and that the defendant go thereof without day, and recover against the plaintiff his costs of defense to be taxed by the Clerk, and have execution thereof.

The plaintiff notes an exception to the above ruling of the Court, and notes an appeal to the Court of Appeals and the bond for costs is fixed in the penalty of $100. or deposit of $50. in lieu thereof.

Memorandum.

May 8, 1906.—Appeal bond filed.

Memorandum.

June 1, 1906.—Bill of exceptions submitted to Court.

Memorandum.

June 7, 1906.—Time to file Transcript of Record in Court of Appeals extended to August 1, 1906.

13 Supreme Court of the District of Columbia.

FRIDAY, *July* 13*th*, 1906.

Session resumed pursuant to adjournment, Hon. Dan Thew Wright, Justice, presiding.

* * * * * * * *

No. 46883. At Law.

WILLIAM J. CARTER, Plaintiff,
vs.
ALLEN MCDERMOTT, Receiver of the City and Suburban Railway Co., Defendant.

The Bill of Exceptions herein, heretofore submitted, being this day signed is now ordered of record as of the time of the noting thereof at the trial.

Bill of Exceptions.

Filed July 13, 1906.

In the Supreme Court of the District of Columbia.

At Law. No. 46883.

WILLIAM J. CARTER, Plaintiff,
vs.
ALLEN MCDERMOTT, Receiver of the City and Suburban Railway Co., Defendant.

Be it remembered that on the 30th day of March, A. D. 1906, the above entitled cause came on for trial before Mr. Justice
14 Wright, and a jury, Messrs. Mason N. Richardson and Charles H. Merillat appearing on behalf of the plaintiff and

Messrs. Charles A. Douglass and George P. Hoover, appearing on behalf of the defendant. Thereupon to maintain the issues on his part joined the plaintiff gave evidence tending to prove as follows:

WILLIAM J. CARTER, the plaintiff, testified that he went to work for the defendant company as a motorman about September 1903, and on December 12, the day of the accident, he was a motorman on one of the defendant's cars, working as an extra man, not yet having been given a regular run, but working wherever and as put to work, working on the North Capital Street and the Maryland lines. That on that occasion he left 15th and G streets in the city of Washington, with his car, at about 5:12 having arrived two minutes before and he was due at Riverlale at 5:50. It was a run of 17 or 18 minutes from the car barn at 4th and T to 15th and G streets. When he left 15th and G streets it was getting dark and was quite dark before he reached Riverdale. After leaving Riverdale on the return to the City between Wells Avenue and Block street he ran into another car, which at the time was in total darkness. The car he ran into was No. 409. It had no lights on it; otherwise he would have seen them as he approached in time to have escaped running into the car in front of him. He could see down the track, which curved very slightly near the place of the accident, at least two blocks ahead and was looking forward just before the accident. That as soon as he saw the car ahead of him he reversed his power on nine points,
15 which throws the power and the wheels in the opposite direction. It was so dark that he could not see No. 409 to make it out until he was within 30 or 35 feet of it. That was the first knowledge he had of the car standing on the track. The car was a dark brownish green color and it looked like a part of the background. The glare behind in his own car has a tendency to blur things in front of you. It was very dark and cloudy at the time of the accident. That he left the Treasury about 5:12, reaching there over the line that ran near the car barn at 4th and T streets in Eckington. He had been at the Treasury not over two minutes when he left. It was 17 or 18 minutes' run from 4th and T to the Treasury. When he left the Treasury it was very near dark and was getting cloudy, and threatening rain. The lamps were on his car front and rear and all were lighted. The signal lamp was attached to the rear. All the equipments for the car are obtained at 4th and T streets in the District, and those seeking work are employed in the District, applying at 14th and East Capitol streets. That the car into which he ran was No. 409, and was on run No. 19. It followed him out to Riverdale. It left the car barn at 4th and T streets, after he left there. Plaintiff had a yellow car, No. 414. There was a slight down grade from Riverdale to the place of the accident and there were no lights in the vicinity of the accident to have helped witness see the car ahead. That there was not a thing to warn him except his own lamp and the green car was lying under the shadow of a high bank in total darkness. As he crashed into it after first reversing, which was the quickest way to stop in emergencies, he noticed the
16 pole was down from the trolley, that there was no red or signal light in the rear, and that conductor Shaffer was on

the bumper outside and trying to fix the trolley. Shaffer left about 5:52 and about three minutes afterwards, about 5:55 witness started out.

It took about a minute and a half to go from Riverdale to the place of the accident. Witness had excellent eye-sight and was formerly a rifle-shot in the army. Shaffer's car was out of sight when witness pulled across the switch to the right track leading to Washington. That he had worked on the Maryland run several times before the accident, but could not say whether he had this particular run before.

On cross examination witness said that the accident happened in Maryland, and shown his application said that he was employed by the company October 28th, before the accident and first went out on the road in November. A man named Veitch was his conductor the day of the accident. He left the Treasury about 5:15, and he got his lamp at 4th and T streets, northeast. The conductor put the rear red light on at that point. It was customary for the conductor to put the lamp on the car there, but he never saw any regulation to that effect to put the lamps on. Witness left Riverdale on his schedule time to return to the city at 5:55, and the other car left at 5:52. The headlight on a car would throw a light 45 or 50 feet ahead, but it would depend somewhat on the night and the light. He was going about 12 miles an hour when the accident occurred,
and it was about schedule time. It was down grade and he
17 knew, by trying that the car would run from Riverdale to
Hyattsville without any current, if given a start. The first time that he knew car No. 409 ahead of him did not have a rear red light was when he was within 45 or 50 feet of it, and then it was too late, though he reversed full nine points. Could not say positively that he stopped at 4th and T streets going out to get a lamp for his car, but he could not have gotten a lamp without stopping, and he had a lamp on his car, so he must have stopped.

Dr. WHITE testified that plaintiff had both legs broken and was permanently injured by the accident and Miss BESSIE MOORE and a younger sister that they went from their home to assist the plaintiff and that everything was in pitch darkness so nothing but a form could be seen ten feet away. The only light was a small oil lamp at Wells Avenue, up a bank and too far away to shed any illumination on the accident.

There was put in evidence a report from the U. S. Naval Observatory that the time of sunset the day of the accident was 4:46 P. M., and from the Weather Bureau that the weather was "partly cloudy and cloudy in the afternoon. Cloudy from 4:00 P. M. to 10:00 P. M."

ROBERT W. BRIGMAN gave evidence tending to show:

That on the night of December 12, 1903, he was running car No. 409 as a motorman; that he usually turned in at the barn not later than 6:20 or 6:25, on that run, which he had often had, as often as once in two or three weeks, regular men getting the run so they

might have an evening off. That prior to the accident there might have been a lamp for car No. 409, on the corner of 4th and T
18 streets on the sidewalk or curb, but there never had been a lamp given out for that car for that particular run, known as No. 19 run, in all the time that he was on the road; that he never did carry a rear end red lamp when he was on that run; that there never were any orders given for that run to carry a lamp at all. That no lamp was ever provided to be taken on that run, and that he never had any instructions to do so or any orders. That he had made that run without a lamp at least 10 or 15 times before the accident. The other conductors or motormen when making that run did not have such a light to his knowledge; that there never was any inspection of the cars as to whether or not they were carrying these lights whenever he was on it. That he left Riverdale on his schedule time. That the night of the accident was quite dark and threatening to rain. When his car reached Riverdale, Carter's car was there and at their request Carter pulled down the track so witness would have room to cross over a switch just beyond Riverdale Station and pass out ahead of Carter's car. As they left Riverdale they came down the track towards Hyattsville, and the trolley on witness' car flew off, hitting one of the cross irons and bounded back against the top of the car very close down. The trolley box wound the rope up and, of course, when the trolley came down it wound it up and it caught. The car became in total darkness, of course. The conductor on witness' car, Shaffer, was not what you might say an old or experienced man and witness did not know what was the matter right at the time. He knew that the car was dark, and he brought his car to a standstill between Wells Avenue and Block
19 street and he heard the conductor knocking on the box and trying to get the trolley rope loose from the box. Witness waited some time and then thinking the delay unusual and remembering the conductor was a new man and thinking he would see what was the matter witness opened his front door and just as he stepped back into the car he saw Carter's car coming. It was not over 25 or 30 feet from witness' car. Witness gave a holler, and a signal to stop, but it was too late and the car bumped into his car. Shaffer was standing on the bumper on the outside of the vestibule of the car and was holding the trolley rope, trying to work it loose from the box. Witness' car had been standing there about 1 and one half minutes; witness examined the trolley box after the accident and it was completely locked. Witness tried but it would not come loose under any circumstances. He does not know what would make the box catch, nothing more than that he knows they often get locked. The boxes are the same for all cars. That was Schaffer's first day's experience on the road by himself, his first day in charge of a car. With a trolley box in that condition, the only thing to do is cut the rope, and that is what an experienced and competent man does when he finds that he can not unloosen it. The trolley box at the end of a run is taken in your hand from one end and put on the other end of the car. Doing this would not give any test of the condition of the box. There was no test made of the box on the day of the accident to ascertain if it was in good condition, to the best of his knowl-

edge. When he saw the trolley box after the accident could
20 not notice it had been smashed any at all, scarcely any, but its working operation was completely tight. Witness had been a motorman just about a year at the time of the accident, and then worked until the 20th of October or November following the accident. A competent man under the conditions of the accident would not have waited more than a minute before cutting the rope. On the night of the accident there was no red light or lamp on the outside of his car. These lights ordinarily are placed on the side of the car, about 3½ feet from the end of the car, the entire vestibule of the car being to the rear and side of the light which is near the end of the body proper of the car. The red light is changed at Riverdale only after they cross the switch. It serves as a signal to another coming in the rear at night-time in event that a car should run dead and the lights from the electric current go out. On the night of the accident there was no lamp provided for car No. 409 at 4th and T street. There was no lamp given for him on that night at all. At the place of the accident there was a high embankment immediately on the right which overshadowed the track, and it was very dark. That is a more or less frequent occurrence that the trolley wheels slip the wire, and prior to the accident it was more or less a frequent thing for the boxes to be out of order so that the rope would not be slipped back easily. The only time he ever knew of the trolley boxes being removed and fixed was when there would be something happen to them. Then it would be taken off and turned over to the shop man.

21 On cross examination witness gave evidence tending to show that he is now employed elsewhere and not by the company, and that he was fired on account of an accident. That on December 12, he had run No. 19 and that was what was called a tripper. It made only one trip in the afternoon, leaving the car barn near 4th and T streets at 4:15 or 4:20 and going to the Treasury Department and thence back by 4th and T streets and to Riverdale. On his return trip his car took on no passengers and was supposed to take none from Riverdale to the car barn as that ended the run and transfers could not be given. When they arrived near the barn from the Treasury his conductor had to use the trolley box in order to put the wheel up on the wire, the current being changed from the underground to the overhead; does not know what caused box to lock. It worked all right at that time. It was a 19-minute schedule run from the barn out to Riverdale, and at Riverdale they also had to take the box and put it from one end to the other. To do that the conductor pulls the trolley rope down and winds the box before he takes the box off. Then he takes it and winds it one-quarter of the distance to make it catch. Conductors pull the trolley down by hand and carry the box in one hand and the trolley in the other. He never knew them to pull the rope down first so as to wind it into the box before they took the box off; that he did not see the conductor at Riverdale when he changed and does not know how he did it or how he adjusted it afterwards. His car went out ahead of Carter's car at Riverdale. He did not know how Carter

was facing, when witness pulled out, but Carter had to face
22 toward Laurel to let witness cross the switch to return to Washington. Witness after crossing the switch stopped on the opposite track and below Carter's car just long enough for Shaffer to put the trolley on. When the trolley was put on it was necessary to manipulate the box in order to replace trolley and it was put on all right. The trolley box was working at that time. Witness had this tripper run 10 or 15 times before that night and had had it 3 or 4 weeks before that night. The car left 4th and T streets, after changing from the under-ground to the over-head in the pit, and there was nobody got off his car to get a lamp for his car at all. There were no particular orders, as to who should do that, the conductor or the motorman, but his conductors always did it. Witness had no orders for that, but thought it was the conductor's business to get off and get them. That he never knew or saw any orders of that kind in the barn; that when he came down to 4th and T streets on the night of the accident there were no lamps there, and he looked to see; that it was dark and very heavy dusk when he got there. One of the barn men was supposed to place the lamps on the sidewalk or curb at 4th and T streets. That on the night of the accident his car was to have turned in at the barn at about 6:20. He does not know whether or not it was dark on the occasion before when he turned in his car, when he had that run. He could not say whether that particular box to his knowledge on No. 409 had got out of order before. When he first saw Carter he was about 25 or 30 feet away, and was putting on his brake at that time. Wit-
ness was not hurt in the collision. He had run No. 19 two
23 or three times between October and December when accident occurred—could not recall that it was dark or not at any time when he had that run and turned his car in at the barn. Never stood around at the barn and watched the workmen to see if they fixed the trolley boxes.

CLAUDE T. THOMPSON, formerly employed by defendant, as a conductor, gave evidence tending to prove that the red signal lamps as a rule before the accident were all numbered to correspond with the numbers on the cars.

Q. After the accident were the numbers all painted off?

Mr. DOUGLASS: I object to the question as immaterial. I object to it upon two grounds; first, that it is wholly immaterial as to what took place after the accident; and, secondly, that it is suggestive and a leading question, and very improper for that reason. But apart from the form of the question I object to it as having no bearing on the case.

Mr. MERILLAT: The ground upon which the question is asked is as laid down in Greenleaf, 16th edition, 1st volume, that the attempt to suppress evidence by intimidating or removing witnesses, and by concealing or destroying evidential material, is likewise admissible. We intend to show——

Mr. DOUGLASS: I would like to know if that charge is made by counsel?

Mr. MERILLAT: The distinct statement and allegation is made by counsel that these lamps had numbers; that the numbers corresponded with the numbers of the cars; that immediately after the accident they painted out every single number on the lamps, and renumbered the lamps not in correspondence with the cars, but 1, 2, 3, 4, 5 and up. Counsel wanted a distinct statement, and there it is.

Mr. DOUGLASS: I submit, if your Honor please, this is no way to endeavor to prove any charge so serious or grave as that; but if the numbers on the lamps were changed, it seems to us that it is an entirely separate thing, and has no bearing on the case whatever. I cannot imagine how anybody could draw the conclusion, from any change in the numbering of the lamps, that there is any effort to suppress any question of fact in this case. The simple, direct question here is whether or not there was a lamp on that car, and if there was no lamp on that car, whose duty it was to have the lamp on the car. Our friends must understand that that is the direct issue here, and that no extraneous matter of this sort should be dragged into this case. We either had the duty to furnish the lamp, or we did not have the duty. Our friends should proceed about it in an orderly and proper way, as I submit, to prove that it was our duty or was not our duty to do it; and that it was the primary cause of the accident; and if it was our duty, whether or not we had performed that duty or had failed to perform it, furnishing the lamps. It strikes me it is a most extraordinary and most unusual way of making an attack upon anyone. What light would it throw upon the question if the numbers were changed, if the numbers were stricken off? Your Honor would readily see that the mere number of the lamp would throw no light upon the proposition of whether there was a lamp there or not, and whose neglect it was if there was none there, if we owed such duty to have a lamp.

Mr. MERILLAT: In respect to the materiality of the question, it has been stated there was a lamp for each of the cars, and that that number corresponded with the number of the car. In other words, that car 414 would have lamp 414. We further expect to show that for this car in question, known as No. 19 Maryland, or 409, there was no lamp at all for that car; that there was none there; that the conductors—and we will produce evidence to that fact, by some of the witnesses at least—that the conductors took the lamps corresponding to the numbers of their cars—that that is what they took. Then we further expect to show that there was no lamp for this particular car at all; that this green conductor, who had been one day in the service, came along and that he took no lamp at all; and we expect to show that there was no lamp there corresponding to his number, and none furnished there for him for that matter. Then we expect to show that immediately after the accident or shortly after the accident they painted out all these numbers, and renumbered the lamps 1, 2, 3, 4 and 5. It is certainly evidential of an attempt to conceal the fact that they had no lamp for this particular car. Its weight, of course, is another thing. Greenleaf lays it down in saying: "In general a party's conduct, so

far as it indicates his own belief in the evidence of his cause may be used against him as an admission; subject, of course, to any explanations he may be able to make, removing that significance from his conduct."

If they can show that the painting out of the numbers
26 and renumbering had not a thing to do with the accident, and was not for any purpose of preventing our having the evidence, well and good. That is evidential, and our statement is evidential too. But I say it is especially so in a case like this, where we will follow this testimony up by other testimony—it is absolutely relevant. Besides that, even this morning, we had witnesses under subpœna, and were asking them questions. We started to ask them questions, and the night inspector came up and took him away, and thereafter the witness said "I cannot say anything to you at all. I will not talk to you, and I will not have anything to do with you." That is a statement that has been made here in this room.

The COURT: If you prove that anybody has been endeavoring to interfere with witnesses who are under subpœna, they will go over into that jail there.

Mr. MERILLAT: I will prove that by Mr. Richardson and myself, that we asked him a question and got an answer right here, and started to ask him a few other questions, and a man named Martin came over and took him over in the corner and talked to him, and gave him evidently directions——

Mr. DOUGLASS: Did you hear what he said?

Mr. MERILLAT: I did not.

Mr. DOUGLASS: Do not make such assertions here then.

Mr. MERILLAT: I had the man's manner, I had him starting to answer questions. After Mr. Martin finished, I went to this
27 man and asked him questions as I had before, and he very gruffly turned away and said he would not answer questions or say anything at all until he got on the witness stand. I further called in Mr. Mersheimer here and told him about it, and he said "That man has no authority at all to act for us, and you can do just as you want to do about what you answer him and what you do not answer him." I said "he is under our subpœna." He said "you can do just exactly as you want to about it." I asked the question, if he had not received orders, and I asked him in Mr. Martin's presence if he had not received orders from Mr. Martin, not to answer anything and he refused to answer that question. The same thing occurred with reference to Mr. Latchford, for I went out and asked Mr. Latchford questions, and he refused, with the night inspector standing right there. We will put these witnesses on the stand and show it.

Mr. DOUGLASS: Counsel has been practicing long enough not to be deducing conclusions that are unwarranted by the facts. I venture the statement, and I ask him to challenge it—and I was on an errand that would not allow me to even consider a lawsuit or any other case, and I know nothing about what took place—but I ask him now to state to your Honor if that witness had been indicating any unwillingness to answer questions before that conversation.

Mr. MERILLAT: Yes, sir; I had asked the witness a question and the witness had answered one question; and I started to ask him another and he started to answer that. This man Martin
28 came and took him over there, and thereafter the witness would not say a single word to me, and I directly, in the presence of Mr. Martin, at that moment, said, "Did not this night inspector, this man here, order you not to say a word," and he would not even answer that. He turned away from me and would not say a thing. Mr. Martin pulled him away by his arm, and took him over to the corner. I could not say what he said. He was answering my questions, and he started to say something about it, and then Martin pulled him away to the corner, and thereafter he would not say a word, even whether Mr. Martin had told him not to or not.

And I say, furthermore, that Mr. Lackey did the very same thing prior to it, at the time the case was up before. Mr. Lackey ordered them not to. I said "they are under my subpœna," and he ordered them away. He ordered them not to come with us. Furthermore, I say that then I told Mr. Lackey "He is under our subpœna." Mr. Lackey said "He is under our subpœna too;" and I went to the clerk's office, and he was not under Mr. Lackey's subpœna at all. There was no subpœna. When I challenged him with that fact he said "we do not subpœna our men. They were under our directions and that is the same thing."

I want to give Mr. Douglass the credit of saying that he did not believe in that; but I say that when we have witnesses here and they are under our subpœna we have a right to ask them questions, and to have them answered, without interference by Mr. Lackey or that night inspector or other people; and when that occurs, it is
29 distinctly laid down in Greenleaf thus: "Attempts to intimidate and suppress witnesses are affirmative evidence in the cause."

Mr. DOUGLASS: I am much obliged to my friend for his certificate of good character, and good motive, on my own part, which I trust is unnecessary. I know nothing of what has taken place in my absence; but nothing has taken place in my presence or in my absence; nor do I believe anything has taken place in my friend's presence, or anybody else's presence, that has been warranted or directed by any of the officials or representatives of this road, to suppress any testimony. I say to your Honor here and now that our position is and has always *has* been, that the witnesses under a subpœna by these gentlemen or by us, or by anybody else, have a perfect right, in their discretion, to simply say to counsel "I will state what I know about the facts of the case upon the witness stand and not elsewhere." Over and over again have I had experience, in trying cases against railway employees, where the railway employee would decline to say one thing, one way or the other. I have no reason to believe that anyone has directed anything to the contrary. I have, with earnestness, and distinct and unequivocal language given instructions that there shall be no such interference.

Mr. MERILLAT: May I interrupt you? There is Mr. Lackey, the secretary of the company. Ask him if he did not instruct and direct these people not to talk to us in the previous case.

Mr. RICHARDSON: He told me, and he told those gentlemen not to come to your office.

30 Mr. MERILLAT: Not to talk to us.

Mr. RICHARDSON: He ordered them away, when they were talking to us in the corridor of the court house.

The COURT: Well, I do not know whether it is contempt of court for anybody to seek to persuade a witness to refuse to confer with counsel. I do not know whether that is contempt of court or not; but if it is and you can prove it, they will go into that jail, it does not make any difference who they are. If you can make that charge good, and if it is contempt of court, they will go to that jail as sure as there is a jail in the District. I do know that it is contempt of court for anybody to attempt to persuade a witness to testify falsely, or to suppress testimony, and if you can establish that anybody has undertaken to persuade a witness either to testify falsely or to withhold facts, that will be a contempt of court, and if anybody has done that they will go into jail. Those propositions, however, are entirely distinct from the question here, with respect to the admission of this particular testimony.

Mr. DOUGLASS: I was going to say to your Honor that on the merits we stand ready to meet any issue of that sort, but I do say deliberately that counsel has no business in bringing that sort of a proposition into this case at this stage of the case, where it is clearly not relevant to the issue before the Court. It can have no other effect—I do not make any charge as to the motive—but it can have no other effect——

The COURT: I do not care about that, whether it is contempt of court or not, but for somebody to try to persuade a witness

31 not to talk to counsel, who is under subpœna, is so reprehensible and so outside of any sort of decency and fairness, that I am ready to say it is entirely appropriate for counsel to call the Court's attention to it at any stage of the proceedings, if in fact it transpired.

Mr. MERILLAT: As to the facts I have stated, I am ready, and Mr. Richardson is, to go upon the stand and swear to them, and we have made those statements upon our oaths as officers of this court, and attorneys of this court. The facts that we have stated are the exact facts that occurred. Whether or not legally it comes within the doctrine of contempt I cannot say, but I make the distinct affirmation, and am ready and expect to go upon the stand under oath to state that we had two of these witnesses here, that we asked them to talk, asked them to come to our office, and Mr. Lackey came up and ordered them not to talk to us and directed them not to come to our office, and ordered them away, and they obeyed his direction in one instance, I think, at least, very reluctantly; and when I called Mr. Lackey's attention to the fact that they were under our subpœna, and that we had a right to do it, he told me deliberately "They are under our subpœna also."

Mr. DOUGLASS: One moment. I desire to make a motion to suppress this statement in the presence of the jury.

Mr. MERILLAT: I am entirely willing that the jury should retire.

Mr. DOUGLASS: I move now that the jury be discharged on the

ground of the improper statements made over and over
32 again in the presence of the jury by counsel. I now make the motion to discharge the jury on that ground, and on the ground of the irreparable injury that has been done the defendant in the cause, without regard to whether or not it is true.

Mr. MERILLAT: With respect to that motion, we have to say that we are not making any statements that we do not expect to go upon the stand and swear to as evidence in this cause. We claim it is material and relevant evidence in the case, and that it comes distinctly within the line laid down in Greenleaf, Wigmore and Jones, to this effect: "also an attempt to suppress evidence by intimidating or removing witnesses is admissible as having a tendency to show consciousness in him of title in the opponent. Concealing or destroying evidential material is likewise admissible."

We think that everything that has occurred is exactly that. It is intimidation of witnesses: We expect to go upon the stand to show those facts as affirmative evidence in our cause, and nothing that has been said by myself, upon my feet in the presence of the jury, is anything that will not be brought to the jury as evidence, of course, under your Honor's permission that it is admissible, and we are satisfied to rest upon its admissibility, and we have a number of authorities supporting the text books.

The COURT: As I started to say, the question of whether anybody has been guilty of unlawful interference with witnesses which justifies dealing by the Court is distinct from the question of the admis-
sibility of this evidence. The rule which permits evidence
33 tending to show that anybody has been undertaking to suppress evidence is only received in cases where the individual whose act is under question is a party to the litigation, on the theory that he has adopted such a course of conduct as is inconsistent with the position he takes in his case in Court. It has never been extended, and ought not to be, to a case where somebody on his own motion undertakes to suppress evidence in another person's cause without that person's assent or acquiescence.

Mr. MERILLAT: Will your Honor hear me on that point? Mr. Lackey here is the secretary and is in charge of the claims department. A corporation can only act through agents and officers. He is the officer immediately charged by the corporation with the conduct of these matters.

The COURT: So I understand.

Mr. MERILLAT: Further, the night inspector—your Honor can rule upon that, of course, when we speak of it—but with respect to this other matter, Mr. Lackey is in exactly that position.

The COURT: I suppose there is nothing clearer than the proposition that the secretary of a corporation is not authorized, as an implied authority, to break the laws on behalf of the company or to intimidate witnesses or to suppress testimony for the company. The assets of a corporation belong to the stockholders, and are not to be taken away from the stockholders because some particular person who happens to be clothed with a certain authority on behalf of the corporation steps outside of it into a field that he is not authorized

to proceed in by the stockholders, and violates the law. It is
34 not part of the stockholders' business. He has no authority that is vested in him by the corporation to intimidate witnesses. They do not employ him for that. They do not hire him for that, and whatever he may do in that regard is entirely outside of the field of his authority to bind the corporation, as it would be if he had no relation whatever with the corporation. Therefore, this evidence of what some employee did in the way of a breach of good faith or ethics, or the law even, is not at all relevant against the corporation. They have not clothed him with authority to proceed in that regard; but that is entirely separate from the other phase of it. Inasmuch as it is not a matter that took place in the presence of the Court, the Court cannot take summary action. There must be a charge in writing filed, and a hearing given. If you prepare a charge——

Mr. MERILLAT: We will do that.

The COURT: And file it——

Mr. MERILLAT: We will do that.

The COURT: I will hear it, and if anybody has been guilty of contempt of court we will find it out.

Mr. MERILLAT: I do not want to press this too much upon your Honor; still, I want to bring this matter, since we would perhaps reserve our exception to this point, to your attention. Mr. Lackey——

Mr. HOOVER: Are you testifying?

Mr. MERILLAT: One moment.

Mr. HOOVER: We object.

The COURT: The objection is sustained.

35 Mr. MERILLAT: He is the claim agent, and is in charge——

Mr. HOOVER: Objection has been made and sustained by the Court. He is trying to get this in the minds of the jury. There can be no other purpose.

Mr. DOUGLASS: I renew my motion to discharge the jury.

The COURT: The motion is overruled, for the reason that it is made apparent to the jury that even if this is done, it is done by somebody who had no right to do it on behalf of the corporation, and it will not affect the corporation. The stockholders of the corporation are not to be charged with what some man does entirely outside of his authority in violation of law. The motion is overruled.

Mr. DOUGLASS: We note an exception to your Honor's action in overruling the motion.

Mr. MERILLAT: We note an exception also.

Mr. DOUGLASS: As I understand there is a question pending that has not been answered.

The COURT: Read the question.

The stenographer read the question as follows:

"Q. After the accident were the numbers all painted off?"

Mr. DOUGLASS: That is objected to.

The COURT: The objection is sustained.

By Mr. MERILLAT:

Q. I will ask you whether or not there was any change made in the numbers on the lamps after the accident?

Mr. DOUGLASS: I object to it on the same ground. That
36 is practically the same question.

The COURT: The objection is sustained.

By Mr. MERILLAT:

Q. What, if any, change was made? A. In the lamps?

Mr. HOOVER: We object. The Court has ruled on that.

Mr. MERILLAT: I do not understand whether the Court ruled on it on the ground that the question was leading or otherwise. If not, I will not press it.

The COURT: I thought I made it pretty plain that the objection was sustained because it was not relevant.

Mr. MERILLAT: Then we note an exception. That is all I have to ask this particular witness.

CARY W. VEITCH gave evidence tending to show that he was employed as a conductor on the City and Suburban line since about July before the accident. Carter had been working as an extra motorman for several weeks before the accident. Witness was conductor and Carter was motorman of the same car the day of the accident. Witness had been on that particular car once before to his knowledge; he was an extra, that is they supplied the place of regular men when they were off and had no regular car; that he does not know how often he and Carter had worked that run; he could not even surmise. It was impossible for him to say how often Carter had worked that run from the Treasury to Riverdale prior to the accident; he may have worked that run from the Treasury to Riverdale as many as four or five times, but he had no positive knowledge. The conductor had entire charge and was
37 in control of the car, and it was the conductor's duty to take off and put on the lamps. It was customary for street cars running into the suburbs, and running in the District of Columbia to have rear red lights after dark or sundown. The lamp used on the cars was a red oil lamp, red on one side and light on the other. The red light would face to the rear. The lamps were put on and lighted in the District of Columbia and were not extinguished or removed, when the District line was passed. It was about 7 minutes' run from the District line to Riverdale. There was no barn or place in Maryland where to get lamps or supplies—only a station platform at the terminus. Witness was asked by plaintiff's counsel a number of leading questions, whereupon defendant's counsel objected and the court overruled the objection, saying it was obvious no responses could be got of the witness except by leading questions and directed the stenographer to note in his minutes wherever witness continued to hesitate in his answers. Witness said that conductors on the City and Suburban are hired at 14th and East Capitol street- in the District of Columbia, also motormen; that on the day

of the accident he does not know what time his car left the Treasury Department, but it was about 5:50 when they left Riverdale; that it was about forty minutes from the Treasury Department to Riverdale, at that time; and that it must have been about 5:10 that he left the Treasury Department; that it took about 18 minutes to run from the Treasury to 4th and T streets; that he does not re-
38 member whether it was after sundown that he left the Treasury on that day, but that it was cloudy at that time; it was not then dark, but it was dusk then; that his car left the barn before going to the Treasury and it took about 18 minutes to make the trip; it was threatening rain when he left the barn. The car is lighted from the trolley and the trolley also supplies the lights for the head lights; in the ordinary operation of the car, when the head-light is turned on the rear light is cut out and in operating the car after sundown the only light that is on the rear of the car is the red light or lamp in a bracket on the side of the body of the car; that they got these red lights or lamps on the curb at the corner of 4th and T streets, northeast, near the car barn; that they did not get them from any one, but they were placed there on the sidewalk, and the conductors got off and got them; that prior to the accident each of these red lamps was numbered corresponding to the number of the car; that on the day of the accident he got a lamp there and each conductor was supposed to get a lamp corresponding to the number of his car; that the number of witness' car was 414, and the number of the car that Shaffer was conductor of was 409; that he does not know whether there was any lamp with a number 409 prior to the accident at 4th and T streets when he got there that afternoon; that he does not remember whether he had or not seen any lamp numbered 409 prior to the accident, and he cannot remember whether before the accident he ever saw a rear red light on car No. 409, because there was not any particular occasion for him to notice that car so that he would remember it; that he did not on the day of the accident and prior to the accident notice whether or not
39 it had a light on it; that he did not look and there was nothing to call his attention to it specially one way or the other prior to the accident; that he had been employed on the road from July or August prior to the accident; that he does not know if any inspection was made of the cars before leaving the barn to see if they had the red lights on; that no one to his knowledge made it his duty to regularly inspect the cars to see if they had all their equipment and had signal lamps; that he does not remember whether it was already dark when he left 4th and T streets going to Riverdale; that it was dark when he reached Riverdale, but he does not remember whether it was dark when he first reached the District line; that it is a 19-minute run from the car barn to Riverdale and it is usually 9 minutes from the District line to Riverdale. That witness does not know what way Carter was facing at the time Shaffer pulled over the switch, whether he was facing Laurel or not, but Carter faced Laurel when he pulled down to let Shaffer cross the switch. Lights were not placed on the rear of cars crossing the switch until after they crossed because the light should be at the

other end till then and the trolley pole also was so near that in crossing the switch a light on the right side would be knocked off. That he does not know whether Shaffer's car had a red lamp on when it left Riverdale, for he did not notice and had his own duties to attend to. That witness and Carter pulled out about on time, and that Shaffer must have pulled out ahead of them as much as two minutes,
but he does not think any longer than that, but had no definite idea how long it was. That witness put his lamp on the rear and two passengers boarded; they were colored men and neither they nor witness were hurt in the accident. That the car of Carter was not in sight when he pulled out; he did not see it or hear it. The track curves slightly almost all the way from Riverdale, but you could see ahead a couple of squares; that you could see ahead one of the red car lights if there was no obstruction half a mile; that the purpose of this red light is for protection against other trains or rear end collisions; that he knew nothing of the collision until the smash. That at a number of points on the road there are high banks on one or the other or both sides of the track; that there is a slight curvature all the way. That after the accident he examined the controller and found it reversed full; that reversing means that the power is cut off and it makes the wheels fly back the other way, and reversing is what they are ordered to do in case of emergency. That the customary rate of speed in the country is from 12 to 15 miles an hour. That he examined the condition of the trolley box after the accident, and it was out of order, and he could not use it; that there was no dent or smash in it; that it had not been broken or smashed as the result of the accident; that he tried to put the trolley up, and could not do so, so he had to cut the rope, because it was so tight that he could not get it released; that when he attempted to put the pole up it was then down off the wire; that is all he observed; that it was so that they could not go ahead in the condition in which it was; that when the pole is down the
lights all are out and the power is gone from the car, the
41 light or electricity is all gone both for lights and power; and the car is in total darkness, except for the red light on the rear at the side of the car.

Q. Was it a more or less frequent occurrence on that road prior to the accident for the trolley pole to slip the wire, and fall down off the wire? A. The trolley pole is suspended on the wire by a spring and when it is displaced it goes up, and of course it would jump the wire at different times; and at times it did that and caused the cars to be in darkness and it is the conductor's duty when that happens to replace it; and he does that by putting the trolley on the wire. That when the rope winds up in the box, you can get it out, it is like a roller blind, it rolls up, but it takes a man with more or less experience to know how to do that with a trolley box, and an inexperienced conductor could not do that; in the event that after two or three attempts you could not do that you would have to take the box off, or take the rope off, cut the rope if you can not release it and go ahead; that he would give it a fair trial before he gave it up, but if he found it impossible in that way to do it, it is the duty of the conductor to

cut the rope; that he did not find any evidences when he examined that box to show that it had been taken off or that an attempt had been made to take it off or that the rope had been cut; that he did that himself.

On cross examination witness gave evidence tending to show that his car went out ahead of Shaffer's car; that he got a light on the curb at 4th and T streets; that the lamps while they are numbered
fit all the cars; that he always looked for the number of the
42 lamp to correspond to his car number; that he did not pay
any attention to the number of lamps that were left there when he got his that afternoon, but there were several lamps there; that it was the conductor's duty to change the light from the rear to the other end at Riverdale; that it was about four or five minutes after the car had left them at Riverdale that the collision or accident took place.

On re-direct examination witness said that it was not customary after the lamps had been placed on the car in the District at Fourth and T streets, to remove it or dispense with its use after they went into Maryland, but that it was customary to continue its use on the rear end of the car.

Whereupon, plaintiff offered to prove that a police regulation in force at the time of the accident in the District of Columbia and adopted by authority of an Act of Congress provided as follows:

"Every street car in motion after sundown shall have two lights, one displayed at each end thereof" (Sec. 24, Police Regulations District of Columbia).

To this offer counsel for defendant objected and the objection was sustained by the Court, whereupon counsel for plaintiff then and there duly noted an exception.

And this being all the evidence on behalf of the plaintiff, in chief, the plaintiff rested.

And thereupon to sustain the issues on its part joined the defendant gave evidence tending to prove as follows:

43 WILLIAM F. DEMENT testified that he was division superintendent on defendant's road, had been in the business about sixteen years and in November, 1893, he had charge of the instruction of all employees. The men after being hired were turned over to him, and after that they reported for instruction at the hand of a regular conductor or motorman. After being about three days in that work, they reported back to him. The company had a system of rules and each and every rule was gone over by him with the men. That he remembers Charles H. Shafer being employed, but does not remember when he was employed. The date as shown on the records was November 20, 1903. Shafer was given a badge and assigned to the City and Suburban division, in charge of a regular employee who had been in the service for some time, and then he reported back again about three days later to witness. The different rules, starting at the first and going all the way through with them, were gone over and the necessity pointed out of carrying out these rules.

He was instructed that it was necessary to carry the red light after sundown for the purpose of preventing rear end collisions. Witness did not instruct him in regard to the trolley box or retriever. That it was December 5 that Shafer went on the road for the first time with a conductor, and it was at that time that witness instructed him with reference to his duties. That witness has no knowledge who instructed Shafer in respect of the trolley box and retriever, or the trolley pole. That witness gave him no instruction as to getting the red light, but did instruct Shafer as to placing it. That he instructed him that it should be placed on the rear end of the car, on the
44 bracket placed there for that purpose, at the same time illustrating where the position of the lamp was by the position of a car equipped with one of these lamps. That he did not show him the operation of it, just simply hung the lamp in the bracket. He told Shafer it was necessary to have a signal light placed on the rear end of his car after sundown for the purpose of preventing rear end collisions, as it was often the case that the trolley would jump the wire, and in that case the car would be in total darkness and for this purpose it was necessary to have this light placed there.

On cross examination witness said that during the year he would put through such course of examination prior to the accident some two hundred and fifty or three hundred men. That he has no special recollection of what he did in reference to this one man Shafer as distinguished from any others but had testified from his general custom. That he read the rules over to all who were there. That he did not take each man that was there and read them over to him, but read the rules over to every man that was there. That he has no personal independent recollection that Shafer was there when he read them over.

ERNEST LAMBERT testified that he is a clerk in the Baltimore & Ohio Railroad Company, but was a conductor on the defendant company's road for a year prior to January, 1904. That witness instructed Shafer on the Maryland line of the defendant's road, between three and four days. He had been on the North Capitol street line before that. Witness instructed him on the Maryland line about collecting fares, and the working of the trolley box and
45 the trolley pole and when to work it; exactly how to do it and also let him do it himself to see that he knew about it. He told Shafer it was the rule of the company to use a red lamp and showed him where to put them on the car, and how to put them on.

Witness showed him where they were kept at the southwest corner of 4th and T streets northeast and had him get them once in a while so that he would know where the place was, and instructed Shafer that on the return trip he should change the red light from one end to the other and witness let him do it himself on one of the three days so that he understood it. That witness let Shafer change the trolley box at each end of the road and witness saw that he did it, so as to understand it thoroughly. During the time he was instructing Shafer he showed him exactly how to adjust the trolley box once or twice, and saw him do it himself. That he saw Shafer do that two

or three times. Of course, witness watched him to see that he did it right. That after Shafer ceased to be under his instructions, he was sent over to Mr. Dement for examination and went on the road the next day after that. That witness himself when he got the red light at 4th and T streets if the sun was not down set it in the car, and if the sun was down he put it on his car in the bracket. He had operated car No. 409 before the accident, and it had the brackets for the lights same as all other cars because he ran it after night, and used the red light on that car. He had run car No. 409 about a dozen times before the time of the accident and always used the red lights as far as he remembers. The red lights were always there for him.

46 Witness knew that the colored man named Terrell placed lamps at the corner of 4th and T streets. That he gave the same instructions to other men that he broke in there that he gave Shafer and the same instruction witness received from the company. That car No. 409 was equipped with a trolley box and he had occasions to us that quite frequently and never had any trouble with it. He was able to place and replace the trolley without the box catching, and it always worked with witness without having any trouble with it. He never had found the boxes in a bad state of repair or out of order. That he could not say he had 409 in December prior to the accident, and he could not give any date at all when he last operated that car before the accident. That he always took any lamp he could get hold of, without respect to the number of the lamp or the number of the car, and the lamps would all fit any car, and over objection of plaintiff who noted an exception witness testified as far as he had observed the general custom among the conductors was to take up any lamp, irrespective of the numbers. There was a lamp numbered 409. That number was on the metal part of the lamp, a round piece of tin, and did not show in the light.

On cross examination witness said that prior to the accident he never had any occasion to examine the lamps to see that there was a lamp numbered 409. That he did not examine to see what the numbers were, that he did not have that much time. That he knows there was a number 409, because he could see them all sitting in a row, with a number on the outside, and the numbers were large, and were painted black. That he does not remember when he first became a conductor. That he does not know how many runs or

47 trips each day No. 19 made on the Maryland run to Riverdale. That he has run tripper No. 19, but he had no particular remembrance of it. That in the evening trip the car left the barn at 4:00 something and got to Riverdale at 5:00 something and they turned in about 6:00 or 7:00 something. That he cannot give any better idea than that. Extra men ran that tripper rather than regular men. There was no one regularly assigned to that run day in and day out. That he does not know whether he ran that run in July, or August or in September. That whatever date he ran it if it was dark he had a lamp. That he could not say whether he ran it in July, August or September, or any month at all, but he supposes that he did. That he does not know which months he ran it. That if he ran it from May to September he did not need a lamp

during that time, and when he did not need a lamp he would not take one. That he cannot say from recollection that he had that run in November or December. That there was always lamps there for that run, whether it got in before dark or not, so that there would be a lamp there for that car in July or August although the car would turn in long before dark. There would be a certain amount of lamps there for the runs. That he knew the lamps were there because he saw them. That he is positive that there was a lamp No. 409 and that it was frequently out there and he had seen it out there, before the accident.

There were instructions there for everybody that the lamps should be used after sundown. That he saw these instructions there on a piece of paper in the barn posted upon the board. That he does not believe he had that run after December 12th, because he had
48 a regular run. That he saw instructions before the accident, but does not remember that after the accident there was instructions posted that they should take lamps for all runs or the men would be discharged. But there was always instructions up there to carry lamps.

On re-direct examination witness testified that a paper shown him contained the instruction he had referred to, and he saw it on a file or tacked up in the barn.

On re-cross examination witness said he could not say whether he saw the order on the file or on a bulletin board. There are a good many other notices on the board and at times they were taken down and put with others on a file. That none of the inspectors or others gave him any special instructions to look at the notices—they were there for you to see—or came out to see that the men got the lamps, but the men had the orders to get them. They had no inspector at 4th and T streets to see that lamps were put out there or that the men took the lamps placed there for them. That when he instructed Shaffer the trolley box did not at any time during that instruction get out of order so that there was never any time when Shaffer was under his instructions that the car became in total darkness. That he had no knowledge of any instructor being at 4th and T streets when new men were broke in or first took a car to see that they did as a matter of fact get a light at that place.

Thereupon said notice was offered in evidence as follows:

49 "August 24, 1903. Notice:—Conductors failing to put signal lights on car will be sent to see the general superintendent. Signed W. E. Lowry, Division Superintendent, Per W."

RUFUS E. MATTIER testified that he had been a conductor on the defendant's road prior to December 1903 for about six or seven years and broke Charles H. Shaffer in on the North Capitol Street and Brookland line. Shaffer ran with him six or seven days and witness instructed him he should always have a red light after sundown because of the danger of a car breaking down and made him put it up and change it at the ends. Witness once in a while had acted as a conductor on the Maryland line and had occasion to use the trolley boxes on the line. It never occurred that he could not get the rope

out of the trolley box, or that he had to cut the rope to get it out of the box and that never to his knowledge ever happened to any other conductor. Witness said he had instructed Shaffer as to the trolley.

On cross-examination witness admitted that while a trolley system was used on the Brookland line that road did not use the trolley boxes and that he had given Shaffer no instructions at all in use of the trolley box. During his work occasionally on the Maryland line he had known the trolley box to work hard, but never knew it get so that he had to cut the rope. If the trolley box got to working hard when he got to the barn he would change the trolley box himself before he put it on his car in the barn, that is no more than putting the trolley up on the wire. He had never known a time when the rope got fastened so tight in the box that by pulling on the
50 rope you could not release it. That he could not say how long he would have to pull it before he could get it released; that it would take a competent and experienced man thirty seconds, and sometimes it might take a minute, to release the rope if it became tight. That if he could not get it released in that time he does not know what he would have done as he never had that experience. That prior to the accident the City & Suburban was run without a book of rules, but there were rules stuck up in the office and shed here, and they were also on the file. These rules consisted of single sheets which were posted up, or tacked up on a file, or some were perhaps in a large book. That he has no personal knowledge of Shaffer going over these rules.

On re-direct examination witness gave evidence tending to show that he did not take a lamp corresponding to the number of his car. There were some who would take the lamp number like that of the car. That he has done that himself, and then again he has jumped off and taken any lamp that was there; any lamp would fit every car; that he would get the car that he would take out at the corner of 4th and T streets inside of the barn.

MORRIS STALLINGS testified that he had been a conductor on the City and Suburban run in Maryland since McKinley's first inauguration. His instructions were always to have a red light on by sundown. The conductor got the lamp at 4th and T streets and placed them on the cars always. The lamps were placed at 4th and T streets by Nelson Terrell a colored man who works in the barn. They generally took the best looking lamp that came first
51 to hand, irrespective of the number. During the whole of his experience he had never known a trolley box get locked or tight, so that you had to cut the rope to replace it back on the wire. He has operated car No. 409, and always used a light on it after sun down.

On cross examination witness admitted that when he ran 409, it was on a regular run and that he never had worked tripper run No. 19, in the afternoon at any time. He said that he never knew a trolley box to get out of order so it would have to be turned in at the barn. He did not know whether or not there are men in the barn whose business it is to fix trolley boxes. If there are mechanics there for that work he did not know it and had no knowledge of them

ever fixing them there or where they fixed them. That he never knew them to get out of order.

EDWARD H. DUKE testified that he was a superintendent at the car barn, and looked after the repairing of the cars. He had a man named Nelson Terrell who was given fifteen lamps prior to the accident and directed to put them out for the Maryland line. There were operated on that road fourteen cars at that time. The purpose was to have one extra. The lamps were numbered corresponding to the number of the cars by Terrell and any lamp would fit any car.

On cross examination witness said that at one time each car had a lamp corresponding with the number of the car. This was before the accident. He could not say when the numbers were changed. He knew as a matter of fact that on the night of the accident car No. 409 had no lamp on it and he learned that right after the accident,

52 but he was not able to say that at that time there were lamps corresponding in numbers to the cars. It was not a part of his duty to go to 4th and T streets to see that the conductors took the lamps placed out there, and no one connected with the company so far as he knew made it a part of his duty to do that.

NELSON TERRELL, colored, testified that he had been employed at the barn about sixteen years, cleaning up, attending to the lamps, helping to repair cars, etc. It was his duty to put the lamps on the corner for the cars. On the evening of December 12, 1903, there were 14 cars that he had to provide lamps for and he took fifteen lamps out that evening, and that was always his rule, fifteen lamps. That he set them on the corner of 4th and T streets; that he does not know what became of them after that, but every conductor was supposed to take one and place it on his car. I have seen conductors take lamps from that place. In the morning if there were any lamps on the corner he would take them in, and there would be some times one there and sometimes not that. December 13th there were two. That he picked the lamps up and went into the barn with them. Reeves Jefferson was with me when I picked the lamps up. That he saw two cars there then smashed up and one of them was No. 409. He numbered the lamps from 400 to 409 and then he had some other cars and he marked lamps for them from 410 to 419. Afterwards he marked the lamps beginning with number one.

On cross examination witness said he did not know whether the men took lamps numbered the same as their cars; all he knew

53 was he set out the lamps. He had numbered the lamps so that he would have a lamp for each car; and as a matter of fact he put the lamps out there whose numbers corresponded with the numbers of the cars that were running that day so that each car would have a lamp there of the same number as the car.

Plaintiff asked witness how many cars ran on the North Capitol street line, to which question counsel for defendant, objected, which objection was sustained by the court, to which ruling counsel for plaintiff duly noted an exception.

WILLIAM E. LOWRY testified that he is division superintendent of the North Capitol and Maryland line and that there were fourteen cars out after sundown on the Maryland line on the 14th of December 1903. The notice to carry lamps was posted under his orders on the blackboard right by the side of the clerk's window and a man had to see it every time he came in. Witness was handed a paper marked "Notice" in evidence and identified it as a notice which was posted under his direction as superintendent of this division.

On cross examination witness testified that the notice was stuck with other papers on files near or about the time of the accident, but that he cannot tell when it was put on there; that he cannot say whether or not when Shaffer was employed it was on the file or not.

Q. What cars get the lamps at Fourth and T streets? A. All the cars that run out on the Maryland line.

Q. Do any cars get it that run on what is called the North Capitol street line? A. Not there, sir.

54 Q. Where do the cars that run on the North Capitol Street line get their lamps? A. At Brookland.

Q. Do cars go out of that barn at all to go to Brookland? Do they first come out of the barn to go to Brookland? A. Yes, sir.

Q. And when a car comes out of the barn—are there any afternoon runs to Brookland? A. Yes, sir.

Q. Before December 12, 1903, what time in the afternoon would cars leave the barn to go to Brookland? A. The first one I think started at 3:10, sir.

Q. What other cars were there on——

Mr. DOUGLASS: Are you asking about the schedule?

Mr. MERILLAT: I am asking him what cars were run from the North Capitol Street barn to Brookland.

Mr. DOUGLASS: I do not think that is cross examination.

The COURT: What is the purpose of it?

Mr. MERILLAT: I do not mind going with Mr. Douglass and explaining to your Honor what the purpose is. I would rather not explain it before the witness.

Mr. Merillat stated to the Court that he expected to prove that other cars than those on the Maryland line ran from the barn past the corner of 4th and T streets; that these cars started out in the afternoon and that some of them left the barn either just before or after dark and at times when a compliance with the District

55 police regulations required them to have lamps, and that the questions were asked on the theory that the conductors of some of these cars might have taken a lamp or lamps at 4th and T streets and thus harmonize with the testimony of Brigman that there was no lamp on the corner when his came along.

ERNEST LAMBERT recalled testified that from a manifest shown him by defendant he can say that he ran car No. 409 on December 7th, but that he has no independent recollection beyond the manifest itself.

Whereupon to further sustain the issues on their part joined the defendants called U. G. CARDER, who gave evidence tending to show; that he was a conductor on the City and Suburban Railway Company's line, and had been so employed three years and six months. That during the time that he was employed there, prior to the 12th of December, 1903, he had worked on the Maryland line, but after a time he worked on the North Capitol street line. That he had a regular run on the Maryland line before the accident, at least four or five months. That during that time he had occasion to get a lamp to place on his car after sundown, and got that lamp at the corner of 4th and T streets, on the curbstone. That he does not know about the custom of other conductors, but he always jumped off and got any that he could get hold of; that he always put them up and had had orders to that effect. That he never tried to get a particular one or one corresponding to the number of the car, but only jumped off, and got the first lamp he came to. That he never had a trolley box hang fast so that he could not get it out or get the rope out
56 and never had that condition brought to his attention by any other conductor and had no experience in that direction.

On cross examination witness gave evidence tending to show: that prior to the accident as far as he knows the lamps were not numbered to correspond to the numbers of the cars. That some of the lamps had numbers on them, and some of these numbers corresponded with the numbers on the cars. That the regular cars were numbered, and the lamps for the regular cars were numbered, and some of them corresponded with the numbers of the cars. That they all had numbers on them, but he does not remember whether they were the numbers of the car, because he did not pay any attention to them. That he has had trolley boxes to work hard, get wound up tight, or something like that. That he never had them to work so that you could not get a car to start again; you would have to slack up if it caught, and it would be out again, as it was only a slight catch, and that you could release it in a minute or something like that; that he never had it so that the car was in total darkness, for two or three minutes at a time, and he always had his signal out there. That he never had his car in total darkness as long as a minute, and not longer than a minute; that it did not require any skill to readjust it so as to get it back again with him. That he never worked that short run No. 19 that he remembers of. That when he came into the barn, he took the lamp off, and set it in front of the office door, and where we go in; in other words he would take his lamp off his car, take it off before going into the barn, as the car would not go into the barn with the lamp on without
57 striking the door, and take it in and set it down. That his run was not always at night. He had an early run and a late run.

On redirect examination witness testified that when he operated car No. 409 at night time it was provided with a lamp, and a bracket to hold the lamp. And that these lamps were all alike so that every lamp will fit every car.

JAMES B. LACKEY testified that he was Secretary of the defendant Company on December 12, and prior thereto and gave evidence as to the condition of the line at the place of the accident being the same December 12, as when Civil Engineer Nelligan examined it.

On cross examination he testified over objection of defendant, the court admitted the evidence as tending to show bias in the witness but not as affirmative in the case that he is in charge of the claims department and that under his direction evidence in suits is collected, and he is the go-between the counsel and the company, and under his direction evidence is obtained for the purpose of trials and claims against the department. That in the court-house, but outside of the court-room, he instructed the witnesses Veitch and Shaffer that they need not go to the office of plaintiff's attorney. That he did not instruct them not to talk to Mr. Richardson or Mr. Merillat, that he told them that they were not required to go to the office of the plaintiff's counsel, and that he told plaintiff's counsel that they were under the direction of the witness. Asked if counsel had not told him they were under his subpœna and if witness had
58 not replied they were under his subpœna also he replied that he might have said his subpœna though he did not think so but he meant the witnesses had orders to report at the court; the company did not subpœna its employés but sent them written directions to report. He had ordered the witnesses to return to the car barn.

On re-direct examination the witness testified that he remained in the court for a while after the witnesses left with the defendant's counsel; that this matter occurred on the 26th., of February following the appearance of the parties in court here, at which time it was arranged that the case go over until March 21st, by the court. That when he reached the hall he saw Mr. Merillat in conversation with Mr. Veitch and Mr. Shaffer, and that witness was somewhat surprised, and that he went up to him, and asked what is this? Witness testified that he said you must know that these men are witnesses for the railroad company and said that Mr. Merillat replied, but they are under my subpœna. Witness had said they are under my direction and order here, and that he said you ought not -o talk to our witnesses any more than you would permit us to talk to your witnesses and witness said that there is just as much reason for him to issue a subpœna for Mr. Merillat's client and require him to talk to me; that they then separated, and that witness then approached Mr. Douglass for the purpose of advising him of what the matter was and a conversation was engaged in there, and Mr. Douglass advised the witness, and that he then told Mr. Merillat he would be guided accordingly, and that for some reason Mr. Merillat turned on his heel and said "all right, we will call it to the attention of
59 the jury, and I think they will take care of it all right;" that the only instruction the employees received from him was they should return to the barn.

On cross examination witness gave evidence tending to show that he has no recollection of the words used, but that he knows that the witnesses when they were excused were directed by the order of the

court to report at the court on the 21st day of March for trial. He denied he had ordered them not to go to Mr. Richardson's office but said his words were they need not go. The men did not go.

Q. I would like to ask you this—if I did not go right from you, where you had given whatever directions or instructions or word you had given, whatever directions or instructions or word you gave to these men, if I did not hunt Mr. Douglass up at once and appeal to him and represent that I had the right, as those witnesses were under my subpœna, to talk to them? A. Yes, sir; and Mr. Douglass——

Q. One moment. Did not Mr. Douglass at first say that he could not interfere between you? Was not that the first thing, and did I not then say "I will bring this matter out on the stand. If you don't do it, I will bring this out, and I am satisfied to let it rest there," and was it not after that that I was told I could have the permission?

The WITNESS: I will say this, in answer to your last question, as to whether or not that took place. My recollection of that is that you said "Very well, I will bring it before the jury, and I will bet the jury takes care of you all right."

60 Mr. CHARLES A. DOUGLAS testified in substance that he is a member of the Bar of the District of Columbia and one of the counsel for the Railway Company—that he was present on the occasion referred to by Mr. Lackey in his testimony—that he does not recall the date, but it was some time in the month of February—he remembered being in court in February on the occasion when the cause was postponed until March 21—that after retiring from the court room and while in the corridor he was present during the conversation between Mr. Merillat and Mr. Lackey with respect to certain witnesses in attendance on the court in behalf of the Railroad Company—that Mr. Merillat had called him out from the court room because of some conversation he had just had with Mr. Lackey—that Mr. Merillat stated to him in substance that Mr. Lackey had refused to allow him to talk to certain railroad witnesses and that he had prohibited them from going to his office, although they were in subpœna by the plaintiff—he stated that he appealed to him, Mr. Douglass, as counsel for the railroad, to give him a chance to talk to the witnesses. He testified that he stated in substance to Mr. Merillat that while he would not prohibit the witnesses to talk to him, he would not direct them to do so, stating that they were free and could do just as they pleased—that the witnesses in subpœna who are in the employ of the Railroad, would receive no instructions not to talk to counsel on the other side, while he, Douglas, was attorney for the road—that they would always be at perfect liberty to do just as they saw proper. In response to the question as to whether or not he remembered any statement made by Mr. Merillat in his, Mr.

61 Douglas', presence to Mr. Lackey, that the matter complained of would be brought to the attention of the jury, he said that his recollection of that conversation was pretty accurate and that he was impressed with it at the time—that Merillat wanted him, Douglas, to direct these people to talk to plaintiff's attorneys—that when he, Douglas, stated that he would not direct them or interfere with

them, Merillat appeared to be dissatisfied with the statement, saying in substance that that attitude by the railroad's attorney would not be effectual and he said that he would bring the matter to the attention of the jury and the jury would take care of the plaintiff.

On cross-examination, Mr. Douglas testified in substance that his directions were then and would in the future be that there should be no interference, direct or indirect, with the perfect liberty on the part of the witnesses to use their own judgment as to whom they would talk—that he would confer with Mr. Lackey with reference to the particular matter in controversy, owing to the statement of Merillat's that Lackey's statement had been so strong and positive about witnesses that any announcement by the Railroad's attorney that they could do as they pleased would not be effectual. Mr. Douglas testified further of his purpose to write a letter that afternoon to Mr. Merillat on the subject, but on account of his health, he was compelled to leave the city and immediately on his return and a few days before the case was called for trial, he directed Mr. Hoover, his assistant, to call on Mr. Richardson in court and
62 to tender these witnesses to Mr. Richardson, offering to have them sent to the office either of Richardson or Merilat, and that about two o'clock in the afternoon of the same day, he wrote a letter addressed to Messrs. Richardson and Merillat in which he stated in substance that if they would give the names of any railroad employee that they desired to talk to, that he, Douglas, would send them to their office that afternoon or morning, or would send any one that they might direct. He tried to reach Mr. Richardson over the 'phone and finally, after a third effort, succeeded, on which occasion he told Richardson of the letter he had written—that this 'phone conversation was in the afternoon between three and four o'clock on the day before the commencement of the trial—that he, Richardson, then told him (Douglas) clearly and distinctly, so that there would be no possible misunderstanding about it, that he supposed the following morning would be all right for him and Merillat to see the witnesses—that the witnesses were in attendance on court the next morning and that neither Richardson nor Merillat said anything further on the subject. In reply to further questions on cross-examination, Mr. Douglas said that he told Mr. Merillat in conversation in the corridor near the court room, that he positively would not direct his witnesses to tell counsel on the other side what they knew about the case, any more than he would expect opposing counsel to instruct their witnesses to him what they knew about the plaintiff's case,—but that there would be no interference on
63 his part one way or the other and further that he directed that Lackey, Mr. Mersheimer and anybody else, not to put any pressure on railroad witnesses or employees directly or indirectly and that on the contrary, if there had been any pressure used, he directed its removal. In answer to the direct question on the subject, Mr. Douglas further testified that while he could not recall the exact language used by Mr. Merillat with reference to the appeal to the jury to take care of him and his clients, he said that he construed Mr. Merillat's statement as a threat, an ill-disguised threat, and that

he thought then and now, that it was so intended by Mr. Merillat—that the statement made by him, Douglas, to Merillat, about his attitude toward witnesses in such cases, was not made after Merillat's threat, but before.

REEVES JEFFERSON, colored, testified that he was employed by the defendant company overhauling cars and had been so employed for sixteen years; that on the morning of December 13, he met Terrell going to work. He saw Terrell pick up two signal lamps at the corner of 4th and T streets, and that when he got to the barn he saw car # 409 smashed up. There were 14 cars out and he saw Nelson every evening put out 15 lamps.

On cross-examination witness said that he usually counted the lamps because he put the cars out. Asked how many cars he put out in July, 1903, witness said the same as in December. Sometimes extra cars were run. He knew he, Terrell, always put aside 15 lamps.

CHARLES SHAFER testified that he was a conductor in the defendant company's service beginning on November 19, which was
64 when he first was ordered to report for instruction, and when he first went into their service he went on with a regular man, Conductor Mattier, to be broken in and was instructed that he was to take a red light and put it on the rear of the car after sundown and was also in the school of instruction before going on a car; that on the day of the accident he left the barn something after four o'clock, he could not remember more definitely, and ran to the Treasury and left the Treasury about a little after five o'clock and his point of destination after he left the Treasury was Riverdale; that before that time he knew where the red lights were kept at the corner of 4th and T streets, N. E., in the City of Washington; that he had gotten lights there before when he was being broken in; that when he arrived at 4th and T streets, he had put his trolley up to the wire, and that was all he had to do, and he did that; that he had the trolley box on at that time, and of course this box holds the trolley down while they run through the city the under-ground system being used in the city and that he had to release it from the box and put it up on the wire. That he had no trouble with it at that point at all. That after he left the trolley pit and turned the corner of 4th and T streets he went to Riverdale and then changed his trolley, and started back to Washington. That it was very near dark as near as he can remember when he left the barn on that trip to Riverdale. That when he left the barn on his trip to Riverdale the day of the accident he did not think about the light, and he did
65 not get the red light or lantern simply because he did not think about it; simply because he forgot it; that he does not think his car stopped at 4th and T streets for the purpose of getting the lamp. That when he got to Riverdale Carter's car was there and was then down at the switch. That he can not say whether the position of Carter's car changed while he was at the switch. After witness had gone through the switch witness changed his trolley, and crossed over; that in changing his trolley he had to

take the trolley down, and take this trolley box off, and turn it around, and put it on the other end; that he just took the rope and pulled it down and it winds in the box, and then he took it around to the other end and that the box worked all right at that time and there was no trouble with it. That he left that point to return to the city sometime after five o'clock. When he arrived at Riverdale his duty in respect of changing the lamp was to take it down and place it on the rear end. That at that time he did not think anything of it. That after he left Riverdale, and about the time he reached Wells Ave., and Block street, the trolley left the wire, and of course he got off to put it up, but that when he tried to put it up he discovered at once that it would not work and he could not get it to go up, and before he had time to get it up or do anything with it, of course the other car came into him and that he did not know anything more, regaining consciousness in the hospital. That he had not stopped more than a minute before the accident occurred; that at the time of the collision he was on the bumper of his car, the bumper is the end of the car outside, it is the back of the car.

66 On cross examination witness testified that he does not think he was unconscious as long as two days, that his skull was fractured, and one side of his face injured, and his side; that he thinks his memory is about the same as it was before the accident; that he recollects the event of that day notwithstanding the accident; that he did not say to Mr. Carter that he did not even remember going to work on that day at all. That he left the barn sometime after four o'clock but he could not say how long after four and if it was almost five o'clock and from there he went to the Treasury. That he will not say that he had ever used a lamp on that car before, but he had on other cars. That was his first day on the Maryland road, and was the first day he was in the charge of a car on that road, but he had been in charge of a car for two days before that day on the North Capitol street line. That he had never been in charge of a car with a trolley box before that day because that was his first day on that road, and the trolley had not before the accident jumped the wire at all while he was working for the company and that he had never had any experience with a car in total darkness owing to the trolley having jumped the wire or for any other reason. That he cannot say how long he was there working at that trolley after it jumped the wire, but he knows it was not long. That he was not able to get the rope out at all, it was fast and tight. The night was very dark. That he cannot say how many times he had tried to release the rope. That he had been broke in but he had never had any such experience on a run by himself as that night. That he had not been given any special instructions what to do in case of an occurrence such as had taken place. That he

67 was to turn in that afternoon for the day something about after six o'clock. That he had never been told by any one not to take a lamp for that run, when he was to turn in close after six. That was the first time that he had worked that run, and he never had worked with any one that had worked that particular run; that he does not remember seeing any one at 4th and T streets

to see that he got a lamp. That he does not remember seeing any one and he just did not think about a lamp. That when he was at Riverdale the car was brightly lighted.

Mr. WARE, day clerk at the car barn, testified that he had charge of assigning the motormen and conductors to the different runs, and knows Brigman, who was employed on the road prior to December 12, 1903, but he does not know exactly when he was employed there; that he had examined the record to see how many times Brigman ran No. 19 from July 1903, up to December 12, and that he ran three times, as much as witness could find, Aug. 4, Oct. 7, and Dec. 12 and that the record is correct Brigman was employed there some months before July but witness did not look back of that month.

JAMES L. MAVERS testified that he was a day electric worker at the barn, and that part of his duty was to look out for the trolley boxes, for the purpose of inspection and repair. That he would pull them up and down, to see that the rope would wind up all right in the boxes, just rolled it up. That he did that in the barn three times every week. That he had a car there numbered 409. That his duty was to inspect all the trolley boxes in the evening and
68 when he got on top of the car he would naturally pull the trolley down. That he would oil the wheel and release it, and let it go out again. That he did that always before the car went out. That the wires in the car barn were charged. That in the evening if he found anything the matter with the trolley box he would take it off and report if he found anything the matter with them.

On cross examination witness testified that he did not know how many cars he had under him but thinks it was about fifty; if the trolley boxes were handled roughly they would get out of order, if handled gently they would not. That he never knew them to get completely tight unless they were broke. That he has no independent recollection or special recollection of going over car No. 409 on the day of the accident. That he has no knowledge apart from his general duty or custom that he inspected that particular car that day. That he never paid any particular attention to the car after it returned from the accident.

GORDON CAMPBELL testified that he was a master mechanic for five years and is a mechanical engineer. The trolley box on Car No. 409 was the Wells trolley box, which is a simple device. He explained its workings, and said it had a spring with two parts on each side to wind and catch the rope. That box or similar ones have been in use three and a half years. These boxes are subject to ordinary repairs like any other piece of apparatus. That he has no reason to believe that they get out of order more than any other apparatus. That everything gets out of order from time to time and they receive such repairs as they require. That in his opinion the use of the trolley box in question would tend to lessen the hap-

pening of accidents, and in his opinion this box is the best
69 known to the profession generally.

On cross examination witness testified the springs might have been broken. That if the spring should catch in that way, the car would become in total darkness and you would not be able to use the trolley box at all. That as a matter of fact in his experience such boxes do sometimes get completely out of order and then the conductor must disconnect or cut the rope. That it has been his experience as a matter of fact that conductors sometimes do cut the ropes when the box gets tight. That assuming the box was all right it would take an experienced conductor about 1/10 of a second to release the rope, so that the trolley would go up. Asked what it would indicate to the witness as an expert as to a conductor's competency or the condition of a box if a man had been two minutes trying to release the rope in the trolley box and had not succeeded in so doing in that length of time witness replied that it would indicate nothing to him as he never had had that experience. There were other devices than the Wilson Trolley Box. They were slightly more costly and they had more mechanism for controlling the trolley, but in his opinion they were not better than the Wells device.

H. W. FULLER testified that he was general manager of the City and Suburban and was familiar with the trolley box used by the road that he authorized the purchase of them some time prior to December 12th, 1903, and that it is the simplest and best device on the market.

This closed the defendant's case.

70 Whereupon the plaintiff CARTER was recalled and testified that at the Emergency Hospital Shaffer said to him about a week after the accident that the accident had completely obliterated everything of that day from his memory, and that he could not remember any of the events of that day.

And thereupon, the aforegoing being all the evidence, the defendant moved the court to take the case from the jury on the whole evidence and direct a verdict for the defendant, but the court refused, whereupon counsel for defendant duly noted an exception.

71 *Ruling of the Court.*

The COURT: I see nothing in any of the cases referred to by counsel that create any confusion in the underlying principles which must control the situation. While that may appear, in some degree to be the case, yet it is clear enough when one comes to consider it, and I believe that by turning to an illustration or two it can be made sufficiently to appear.

And, first, one must contemplate the distinction between the actual putting in operation of appliances by a corporation, and the supplying of appliances to the hand of the servant who is to make use of

them in operation, for the purpose of being put into operation by him as part of the employment for which he is hired. If the law requires the corporation to actually go beyond the supplying to the hand of the employee, to be put in use by him, suitable appliances, if it requires the corporation to actually see to it that the appliances are put into use, then the law would be as claimed by counsel for the plaintiff.

Let us see whether that can be the law. Take as an illustration, one which comes readily to mind, the detachable hand brake or detachable hand trolley controller that is so well known to be a part of electric cars that almost everyone is familiar with them. If the duty is upon the company to see to it that appliances are put in operation, then the company never could relieve itself from responsibility for an accident that was occasioned by the absence of a de-
72 tachable brake handle from its position on the car, or for one occasioned by the absence of a detachable trolley controller from its position, no matter how that absence was occasioned.

In other words, if it was the duty of the company to see that the appliances were put into operation, if it turned out that upon a particular trip of a trolley car to Riverdale, although the company had supplied the brake handle and it had been in operation on the way out on the front of the car, if the motorman, when he turned to come back, took off the detachable brake handle from the end of the car where it had been and carried it so far forward as the platform, which would be the front end on the return trip, and laid it on the platform without putting it in position on the brake axis then the company would have violated its duty, because of the failure to see to it that the appliance was put into operation.

It seems to me that illustration is striking enough to make it apparent, without proceeding to the consideration of any others; that it cannot be the law that the company is required to see to it that appliances, although made ready and supplied, are actually put into operation. No cases have been produced which go to that extreme, and I never heard of any. Indeed I never heard the rule named to be any broader than the general rule that the company is under the duty of supplying to its employees suitable appliances. I am quite clear, therefore, that the law is not and never was that the company shall be under the duty of going so far as to see to it
73 that the necessary appliances are actually put into operation, but they perform all the duty that the law lays upon them by supplying, to the hands of those who are to use the appliances, such appliances as are reasonably safe. That in my judgment, is all the duty the corporation at bar was under upon the occasion in question.

If it be said that ordinary care required them to provide a light for the rear end of car 409, that duty might have been complied with in one of two ways; and by the failure to distinguish between the two and to carry them out through the various stages, confusion is precipitated. The first way in which they might comply with that duty is by reserving to themselves, independent of conductors, and independent of motormen, the habit of installing the light in the

bracket on the car through the medium of certain other servants, let us say, for illustration, Nelson. If the company had reserved to itself that method of supplying the appliances or light, if they had been in the habit of sending Nelson on board the cars to put the light on the cars, then the failure of Nelson would be the failure of the company, and his omission to supply the light on the particular occasion in question would have been the omission of the company for which they would have been responsible to the motorman or the conductor, in case of injury from the absence of the light.

The other legitimate method through which they might have performed the duty, was in supplying it to the hand of the
74 employee who was to use it—and that would be the conductor Schaffer—leaving it to him to put it into operation. In other words, if they said to Schaffer: "You are the one who is to be in charge of this car and it is necessary that a rear light should be upon the rear of your car in order for safety; here is that light, put it on your car"—that would be a supplying to the hands of the employee who was to use the appliance of the necessary appliance and in such manner of performance of duty, the company would have discharged itself, in the fullest regard, of the obligation which was upon it.

That distinction is perfectly patent in the case in 83rd Appellate division, New York, the steamboat case, where a laborer was engaged in the service of removing coal from a wharf into the hold of a vessel. If the company had said to him: "It is our duty to supply light for you and here is the light; we leave it with you and you put it up;" or if they said that to anyone whose business it was to have used the light in the discharge of the service, they would have relieved themselves of the responsibility. But they did not do that in that case, because they reserved to themselves the right to put it up for this man. They reserved to themselves the right to put it up through the foreman, who was not one at all concerned in the use of the light for the purpose of protection. In other words, that was an instance where they withdrew from those who would be made safe by the light, or from those who were actually to be advantaged by
75 the presence of the light, any concern with respect to putting it into position, and they made use of the habit of putting it into position through a foreman, who was to make no use of it after it got into position, in other words, a person who had nothing to do with the operation of the appliance after it was in position.

There can be no case found, so far as the diligence of counsel has been able to discover, or so far as my observation goes, in which that distinction is not perfectly patent and it is present in all cases, if one will understand the distinction and see the application of it.

What has always seemed to me to be the nearest case on the subject is the Hutton case in 139th Federal, decided by Circuit Judge Wallace. That was a case, where the employer's liability act of the State of New York had a requirement that a builder should provide safe scaffolding for the use of masons. Hutton was a boss mason who was engaged in laying some stone and he had, amongst other masons who worked with him, mere laborers whose business it was to

take down the scaffolding at the end of the work in that particular loaclity, to attend to the removal of it and, if necessary, re-erect it at a different place in the building. This scaffolding, as originally supplied, was entirely safe and suitable; but on one occasion it was taken down by the laborers for the purpose of being moved to another situation and re-erected by them and it was turned over to the boss mason in an unsafe and insecure condition, by reason of which Hutton fell and was injured.

76 It was claimed there that, under the statute, there could be no escape from the contention that it was the duty of the employer to see to it that the scaffold was safe to the masons just as it is claimed at bar that the duty of the railroad company was to see to it that a light was on the rear end of the car. It was ruled by the Circuit Court of the United States, in that case, that the full duty of the employer was satisfied when he applied a scaffold which was originally safe, and that if it turned out, in a particular instance, to be unsafe simply because some employee negligently failed to properly put it together, it was the negligence of a common servant, and there was no negligence charg-able to the employer.

And so in the case at bar, it seems quite clear to me that inasmuch as Schaffer was the conductor of the car and concerned in the operation of it at the time, if it was necessary for it to display a rear light, and the company supplied the light on the curb, thereby practically saying to Schaffer "It is necessary for you to have a light; here is your light, put it on your car," they thereby discharged the obligation upon them; and if — Schaffer's fault alone the light was absent from the car, there was, in that absence of the light, no negligence upon the part of the corporation rising from the theory that they had failed in any duty. The only negligence was that of a common servant, Schaffer, which was a chance which the plaintiff

77 took when he engaged himself in the service, and which necessarily carried with it the presence of other servants who, perhaps, would be careless.

Unless counsel are of a different opinion, I am very strongly disposed to submit to the jury these special questions of fact, in order that this trial may be a full determination of all the matters pending between the parties, so that, in any event, they will never be required to go to the trouble of a distinct jury trial.

After argument:

Mr. MERILLAT: In view of the turn matters have taken we would like to submit a motion to add to those questions to be submitted to the jury the following question:

Was the company aware of the violation of its rules requiring that light should be upon these cars?

After argument:

The COURT: I do not think there is anything in the declaration which makes that a ground of negligence. The question is refused for that reason, and, secondly, because there is no evidence which would justify the jury in making such a finding.

Mr. MERILLAT: We except to that refusal and also to the refusal

to submit to the jury the matter of the trolley box and the incompetency of Schaffer.

The COURT: Yes.

Mr. DOUGLASS: I would like to suggest that this question
78 be answered by the jury:

Whether or not this accident was caused by any other act of negligence on the part of Schaffer, other than the absence of the procurement by him of a light.

Your Honor will remember that it has been contended here there was negligence in the way he operated the trolley box, that it took too much time to do it and that he should have cut the rope. That has been the contention submitted on behalf of the other side. I think that question ought to be answered in that connection.

After argument.

The COURT: That would not have been the proximate cause of the injury. There is another reason for excluding the trolley box theory, and that is that when you have the two rails of a railroad put down for the purpose of carrying cars on the rails, it is not negligence and it cannot be negligence in itself alone for the company to have a car on its railroad tracks in that place. It was not negligence for the cars to be on these rails at this time, and it could not have been, in itself alone, negligence, no matter how it got there, no matter why it was staying there, no matter whether it was because it had a broken trolley box or a broken wheel or a broken axle. It was there on the tracks, in the place where a car should be, and it could not be negligence for it to be there. The negligence, if any, could only be in the failure to warn the following car that it was there. That, in my judgment, wipes out the trolley box
79 claim, independent of other considerations.

Mr. MERILLAT: In order to preserve the record we would like these questions added:

"8. Did or did not the defendant know that a rule was being violated by the men on the run Schaffer was making?

"9. Did or did not the defendant make reasonable inspections to ascertain whether or not its rules were being observed as to the runs that Schaffer was making?"

We further note exceptions with respect to the refusal of the Court to admit the trolley box matter and Schaffer's competency to the jury.

The COURT: They will be respectively denied, for the reasons stated, and an exception noted.

By the COURT (to the jury): You are not to render a general verdict finding expressly one way or the other in favor of either of the parties, but you shall render a special verdict. That is to say, a verdict which shall determine the specific facts which in themselves are essential to the decision of the case, from the standpoint of the law, because the nature of the case is such that after you find certain facts the rest of it is merely a question of law. The form of your verdict you will take from the form in writing which will be submitted to you, and which you may carry with you on your retirement. I now hold it here. First, you will determine what sum will

compensate the plaintiff Carter, in so far as money can compensate him for the injury that was sustained by him from the accident.

80 Determine what sum will fairly compensate him for the physical pain and suffering that he underwent from his injury; and secondly what sum will fairly compensate him for the pain and suffering if any, you find from the evidence he will endure in the future; third, if you find that the nature of the injury is permanent, that is to say of such a character that it will prevent him in the future from pursuing his walk through life as otherwise he would have done, then in that regard such sum as you — will fairly compensate him in that behalf. Then you will proceed to the consideration of the special findings, which are set down upon this sheet, appropriately numbered. You will observe that in each there is a blank space, and at the margin opposite each, words which are appropriate to whatever findings you may make in respect to the particular fact. I will illustrate by reading one. 1. "We find that for the safety of motormen ordinary care—there is a blank after care—require the defendant to maintain a rear light upon car No. 409, while upon its way from Riverdale to the District line on the occasion of the accident." If you find that ordinary care did require it, you will insert the word "did" in that blank, and your finding will then be "we find that for the safety of motormen ordinary care did require the defendant to maintain a rear light upon car No. 409, while upon its way from Riverdale to the District line, on the occasion of the accident. If you find that ordinary care did not require it, the defendant, to maintain a rear light, you will

81 insert the words "did not" in the blank and so in respect of each blank, when appearing in each finding that follows:

I will go so far into the consideration of each of these findings as to indicate to you the rules which will enable you to determine the facts involved. The first finding is: We find that for safety of motormen ordinary care—blank—require the defendant to maintain a rear light upon car No. 409, while upon its way from Riverdale to the District line, on the occasion of the accident.

It is conceded by both parties that the accident occurred in Maryland. There is no law in Maryland that required the defendant to maintain a light on this rear car. Therefore the question of its obligation to maintain a light depends upon the degree of care which a railroad company in that locality owed to its employees in that regard. That is to say, it is a question of fact for you to determine, whether or not under those circumstances persons of ordinary prudence and caution operating a street railway such as this was, would have supplied rear lights for the safety of its motormen. If you find that a person of ordinary prudence in operating such a railroad at such a place, under such conditions as maintained would have supplied the rear light, then the duty was upon the company to have supplied the rear light; but if you find under all the circumstances that persons of ordinary prudence would not have found it necessary to supply a rear light, then this company was under no obligation to supply one at that location.

82 Second: We find that upon the occasion of the accident the defendant "did" provide or "did not" provide upon the curb at 4- and T Streets a rear light for car No. 409. That is a simple plain question concerning which no comment will be made.

Third: We find that—blank—rule of the company required Schaffer to place such light in position upon the car. There is a blank there to show that a rule of the company so required or that no rule of the company so required. If you find that the rule required that, answer that a rule of the company required it; if you find that no rule required it, insert the word "no." And you are concerned in that regard in understanding what is to be considered as a "rule." It is not necessary that there should have been a written rule. If the employees were generally and universally instructed to adopt a certain course of conduct, that requirement would be a rule, although the instruction was not reduced to print or writing; and if conductors upon this car had been instructed, and were under instructions to take a light from the barn and place it upon the car, that would be a rule although the direction was merely oral.

Fourth: We find that such light "was" or "was not" omitted through his fault alone. That needs no comment.

Fifth: We find that when car No. 409 left Riverdale to return to Washington, Carter "did" or "did not" know that he carried no rear light.

83 Sixth: We find that after he left Riverdale, Carter "was" or "was not" negligent in failing to look out for Car No. 409.

Seventh: We find that Carter "was not" negligent in or "was" negligent in a manner that directly contributed to his injury.

These three may be contemplated under some general observation- that apply to all. The test of negligence is always the same and the presence of negligence in the conduct of an individual is determined by considering whether or not the conduct adopted by the individual in question upon the occasion in question under the circumstances which surrounded him, was such conduct as a person of ordinary prudence and caution would have adopted under these circumstances; that rule applies to Schaffer and to Carter, and in determining whether or not Carter was negligent in respect to operating his car regardless of the car which was ahead of him, you will determine whether or not in the first place, he knew that that car left Riverdale without a light. If he did know that that car left Riverdale without a light, it does not necessarily follow that he committed negligence in failing to look out for it, but you must consider the nature of the road, the time of the night the rate of speed at which Carter was progressing and the rate of speed at which he had a right to believe that the other car was progressing, and taking into consideration every fact that was present in the mind of Carter on that occasion, ask yourself would a man of ordinary prudence

84 and caution had he been in Carter's place, have looked out for car No. 409. If he would have so done then Carter was negligent in not looking out for it, but if a man of ordinary prudence would not have looked out for Car No. 409 any more than Carter did, then Carter was not guilty of negligence in not looking out for

it; the other consideration which pertains to this question of negligence is plain enough upon a moment's reflection. If a man is negligent and his negligence does not produce any results, and he is not chargeable with anything in that regard, nor any one injured because of it, then it has no effect upon the rights of any one; so, although Carter might have been negligent in failing to look out for Car No. 409, that negligence could not affect the right of either party in this case, unless that negligence had something to do with the outcome of the case. That is to say with the accident. It therefore becomes material to answer the last question "was Carter negligent in a manner that directly contributed to his injury." Here is the question briefly. Although you find that he was negligent in not looking out for Car No. 409, yet if he could not have helped the matter, if he could not have stopped his own car, although he had been looking out, why then the failure to look out has produced no effect upon the accident, and negligence in that regard would not have contributed to the collision and thus to Carter's injury. You may upon your retirement take this form with you, fill in the blanks, as has been indicated, choosing from the margin
85 the appropriate word to express your finds, and when you have agreed return this form so filled out to the court.

Mr. MERILLAT: In order to preserve the record, I would like this question, did or did not the defendant (reads extra questions).

Overruled Exception. And further exception to the declination of the court to submit the matter of the trolley box, and the matter of Shaffer's competency.

COURT: The request is denied for the reasons given this morning.

And thereupon the Court submitted in writing to the jury the series of questions to be answered by it and to form its special verdict and the jury retired to consider of their verdict. And next thereupon the jury returned and answering the several questions and each and every of them submitted to them in writing by the court, returned the following as their special verdict in the case:

The jury upon their oath, say they find in favor of the plaintiff, and that the money payable to him by the defendant is $2500.00, if the court shall be of the opinion that he ought to recover against the defendant upon the facts submitted to us upon the trial, which facts were as follows:

1. We find for the safety of motormen, ordinary care did require the defendant to maintain a rear light upon car No. 409 while upon its way from Riverdale to the District Line on the occasion of the accident.

86 2. We find that upon the occasion of the accident, the defendant did provide upon the curb at 4th & T Streets, a rear light for car No. 409.

3. We find that a rule of the company required Shaffer to place said light in position upon the car.

4. We find that said light was not omitted through his fault alone.

5. We find that when car No. 409 left Riverdale to return to Washington, Carter did not know that it carried no rear light.

6. We find that after he left Riverdale, Carter was not negligent in failing to look out for car No. 409.

7. We find that Carter was not negligent in a manner that directly contributed to his injury.

But upon these facts, if it shall be the opinion of the court that the plaintiff ought not to recover, against the defendant, then we find in favor of the defendant.

The foregoing special verdict was returned to the court by the jury duly signed by all twelve jurors.

Be it further remembered that each of the exceptions hereinbefore noted were then and there at the time separately and severally taken by counsel for the plaintiff to the ruling of the court during the progress of the trial and each of the exceptions taken by counsel for plaintiff to the refusal of the court to submit to the
87 jury each of the questions or lines of instructions of the plaintiff hereinbefore set forth were so taken by plaintiff then and there, before the jury retired separately and severally, and said exceptions were then and there, separately and severally, duly noted upon the minutes of the justice presiding at the trial and counsel for the plaintiff then and there prayed the court, and now prays the court, to sign and seal this bill of exceptions, to have the same force and effect as if each of the said exceptions was separately and severally set forth in a separate bill of exceptions and at the request of said counsel for the plaintiff the same is accordingly signed and sealed and made a part of the record in this cause now for then, this 13 day of July, A. D. 1906.

DAN. THEW WRIGHT, *Justice.*

MASON N. RICHARDSON,
CHARLES H. MERILLAT,
Attorneys for Plaintiff.

We consent:
CHAS. A. DOUGLAS,
GEO. P. HOOVER,
Def't's Att'ys.

88 *Præcipe for Transcript.*

Filed July 13, 1906.

In the Supreme Court of the District of Columbia, the 13th day of July, 1906.

At Law. No. 46883.

WM. J. CARTER, Plaintiff,
vs.
ALLEN MCDERMOTT, Receiver.

The Clerk of said Court will prepare a transcript of record for appeal to the Court of Appeals in the above entitled cause, including motions for new trial, in arrest of judgment &c.

CHAS. H. MERILLAT,
Attorney for Plaintiff.

89 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Corut of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 88, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 46,883, at law, wherein William J. Carter is plaintiff and, Allan L. McDermott, Receiver of the City and Suburban Railway Company of Washington, is defendant, as the same remains upon the files and of record in said court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 31st day of July, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk,*
By S. McC. HAWKEN,
Ass't Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1712. William J. Carter, appellant, *vs.* Allan L. McDermott, receiver, &c. Court of Appeals, District of Columbia. Filed Jul- 31, 1906. Henry W. Hodges, clerk.